IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10769 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJAKBHAI NASIRKHAN KURESHI

Versus

STATE OF GUJARAT

Appearance:

MR PUSHPADATTA VYAS for Petitioner

MR PK SHUKLA, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 21/12/2000

ORAL JUDGEMENT

1. Petitioner who is the brother of detenu Gulabnabi alias Guliyo Nasirkhan has filed this petition under Article 226 of the Constitution challenging the detention order of the detenu passed by the District Magistrate,

Mehsana, on 15th July, 2000 in exercise of powers conferred upon him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the detenu came to be detained from 15th July, 2000 in pursuance of the above said order.

2. The detaining authority took into consideration the 4 crimes registered against the detenu and complaint and investigation made in the above said crimes. In addition to this, the detaining authority has placed reliance on statements of two witnesses recorded on 31st March, 2000 and 2nd April, 2000 respectively, who have offered their statements against the detenu on assurance of anonymity of identity to the extent that the detenu was a headstrong person and hardened criminal and was obstruction to public peace. From the above materials, the detaining authority came to the conclusion that the detenu was a "bootlegger" within the meaning of Section 2(b) of the PASA Act. Therefore, the impugned order was passed against the detenu under the PASA Act.

3. Learned Advocate Mr. Pushpadatta Vyas for the petitioner and learned AGP Mr.P.K.Shukla for the respondents were heard.

4. Amongst various grounds it was vehemently urged against the order of detention that the order is vitiated by the delay caused in passing of the order of detention. It was urged that last crime out of four crimes came to be registered against the detenu on 15th December, 1999, the statements of the witnesses whose identity not disclosed were recorded on 27.1.2000, who in turn narrated the incidents of 20th June, 2000 and 26th June, 2000 respectively. It is urged that thereafter the order came to be passed on 15th of July, 2000 only. Therefore, according to the learned advocate for the petitioner, the order of detention is vitiated due to delay caused in passing of the order.

5. Having regard to the rival contentions and scrutinising the record, it appears that the facts of the present case are squarely covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, reported in 1997 (1) GLH 381. This Court after relying upon the ratio laid down by the Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, reported in 1993 (2) Suppl. SCC 61, came to the conclusion that the order of detention was required to be set aside due to unexplained delay in passing of the order and the time lapsed between the registration of a crime and passing of the order. In

this case also, the order of detention is required to be quashed solely on the ground that there is a delay in passing of the order. In fact, it is clear that the last offence came to be registered on 15th December, 1999 and order came to be passed on 15th July 2000. In between an attempt has been made to record the statements of the witnesses on 27th June, 2000, who have stated that the detenu was hardened criminal and headstrong person and in one of the incidents he had beaten the witness on a small issue. The other witnesses stated that on a small issue the detenu had quarreled with the witness who was beaten by him. When we scrutinise these two incidents, they are all in a common nature and it clearly appears that the statements were recorded to give life to the stale cases which are registered long back against the detenu. To be precise, the last crime which registered against the detenu was on 15.12.1999. Therefore, applying the ratio of Elesh Nandubhai Patel (supra) in the present case also, the order of detention is required to be set aside on the ground of delay in passing the order of detention.

6. In view of the above discussion, this petition is allowed. The order passed by the District Magistrate, Mehsana, on 15th July, 2000 against the detenu under the PASA Act is hereby ordered to be quashed and set aside. Detenu - Gulabnabi alias Guliyo Nasirkhan is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair